

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

2005 1 21

EILEEN M.ZIEMBA)	RECEIVED U.S. DISTRICT COURT MASSACHUSETTS
Plaintiff)	JUN 27 2005
)	S. JONES
v.)	
)	
THE LIDO RESTAURANT)	
Defendant)	

05-40103 FDS

COMPLAINT AND JURY DEMAND

PARTIES

1. The Plaintiff is an individual, who resides at 56 Steepleview Dr., Sturbridge, Worcester County, Massachusetts 01566.
2. The Defendant, The Lido Restaurant, is, upon information and belief, a corporation incorporated in Connecticut with a principal place of business in Quinebaug, Connecticut.

FACTS

3. On or about June 28, 2003, the plaintiff was at defendant's restaurant in Quinebaug, Connecticut as a result of advertising by the defendant in Massachusetts. Upon information and belief, The Lido Restaurant is located within a few hundred feet of the Massachusetts border and its sign is visible from Massachusetts. Upon information and belief, the majority of the clientele of The Lido Restaurant come from Dudley, Webster, and Southbridge, Massachusetts.

RECEIPT # 404545
 AMOUNT \$ 350.00
 SUMMONS ISSUED ✓
 LOCAL RULE 4.1 ✓
 WAIVER FORM ✓
 MCF ISSUED ✓
 BY DPTY. CLK. S. JONES
 DATE 6-27-05

4. On or about June 28, 2003, plaintiff was exiting the restaurant through the front entrance. The front exit was unreasonably dangerous in that the step-down was unmarked, not to building code, and lacked handrails.
5. Upon information and belief, the owners of the building had recognized the dangerous nature of the exit and had negligently placed a sign warning of the danger on the back of the exit door. Because the exit door was open when plaintiff approached it, the sign was not visible, due to the negligent placement of the sign by defendant.
6. Upon information and belief, other patrons of the restaurant had fallen due to the unreasonably dangerous step-down, had been injured, and such injuries were known to the defendant.
7. Upon information and belief, because other patrons of the restaurant had fallen due to the unreasonably dangerous step-down, had been injured, and such injuries were known to the defendant, the defendant had attempted to warn patrons of the dangerous condition but had done so negligently.
8. As a direct causal result of the negligence of defendant and and/or its agents or employees and the unreasonably dangerous condition of defendant's premises, Plaintiff fell, breaking her leg and hip. Plaintiff was taken by ambulance to Harrington Memorial Hospital, where she was stabilized and then transported to Worcester Medical Center where she underwent leg and hip surgery. Plaintiff thereafter underwent rehabilitation at Hubbard Regional Hospital Rehab Center.

9. As a direct causal result of the negligence of defendant and and/or its agents or employees and the unreasonably dangerous condition of defendant's premises, Plaintiff suffered permanent physical and mental injuries including an in turned foot, causing her to walk with a limp and using a cane.

JURISDICTION AND VENUE

10. Jurisdiction is proper pursuant to 28 U.S.C. 1332(a)(2) because of diversity of citizenship and because the amount in controversy exceeds \$75,000 (seventy-five thousand dollars).
11. Venue is proper pursuant to 28 U.S.C. 1391.

FIRST COUNT

(Premises Liability)

12. Plaintiff repeats and realleges each preceding paragraph of this Complaint.
13. Defendant through its agents and employees negligently allowed an unreasonably dangerous condition to exist on its premises.
14. As a result of defendant's negligence and the dangerous condition of its premises, plaintiff has suffered damages, including but not limited to a broken hip, broken leg, permanent pain, permanent limp, permanent loss of hip and leg function, mental and emotional anguish.

WHEREFORE, the Plaintiff demands judgment under Count I for the full extent of her damages including interest and costs.

COUNT II

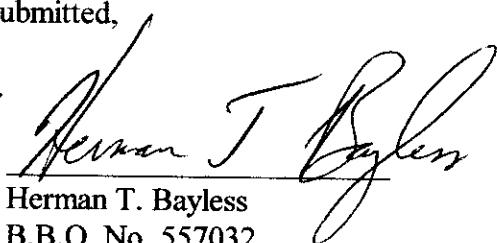
15. Plaintiff restates and realleges all preceding paragraphs of this Complaint.
16. Plaintiff negligently placed the sign warning of the dangerous condition on its premises so that the sign was not visible if the door was open.
17. As a result of defendant's negligence and the dangerous condition of its premises, plaintiff has suffered damages, including but not limited to a broken hip, broken leg, permanent pain, permanent limp, permanent loss of hip and leg function, mental and emotional anguish.

WHEREFORE, the Plaintiff demands judgment under Count II for the full extent of her damages including interest and costs.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL COUNTS SO TRIABLE

Respectfully Submitted,
The Plaintiff,
Eileen Ziembra.

By:


Herman T. Bayless
B.B.O. No. 557032
118 Main Street
Sturbridge, MA 01566
(508) 797-3777

Date: June 27, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05-40103

1. Title of case (name of first party on each side only) Eileen M. Ziembra v. The Lido Restaurant

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

— I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.

— II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Herman T. Bayless, Esq.ADDRESS 446 Main St, 120th FlTELEPHONE NO. Worcester, MA 01608